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ABSTRACT

This part of the School Management Handbook provides elementary school administrators with an overview of some of the special education regulations mandated in Public Law 94-142, the Education for All Handicapped Children Act. Section 1 of the document defines screening and evaluation procedures for identifying handicapping conditions of children that require special educational attention. In addition, the section offers guidelines for ensuring that evaluation materials and procedures are nondiscriminatory. Section 2 discusses regulations regarding the placement of handicapped students, reviewing the concept of the "least restrictive environment" and the related requirements for mainstreaming. State placement requirements governing both public and private placement are also explained. The third section covers the general curriculum, extracurricular activities, uses of minimum competency testing, and staffing requirements. Section 4 treats required supportive services, including medical and psychological services and other services needed to assure the educational benefits of the school experience. All four sections include specific recommendations for school policy regarding special education. (PGD)

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Number 4 March 1982

SCHOOL MANAGEMENT HANDBOOK

Implementing Special Education

Screening and Evaluation

Placement

Curriculum and Staffing

Related Services

Index

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4.1 SCREENING AND EVALUATION

SUMMARY

PL 94-142 requires states and local districts to locate all handicapped children in their jurisdictions and to evaluate them using nondiscriminatory methods.

BACKGROUND

Prior to the passage of PL 94-142, an earlier law (PL 93-380) required states to begin the process of identifying, locating, and evaluating handicapped children. The goal was to complete this process by the time PL 94-142's educational standards became effective in 1978. The present law carries forward the same obligation and also requires states and local districts to determine whether each handicapped child is receiving special education and related services, 20 U.S.C. § 1414(a)(1)(A).

SCREENING

The term "screening" refers to the routine examination of large numbers of children using relatively fast and inexpensive methods. The goal is not to pinpoint handicaps, but merely to find those children who may have one handicap or another. These children then undergo much more detailed "evaluation," discussed below. Ideally a screening program should reach every child in the state.

The appropriate ages for screening depend on the ages at which the state undertakes to educate handicapped students. PL 94-142 requires the states to educate all handicapped persons between the ages of three and twenty-one; but the law allows a state to leave out the three-to-five-year-olds and those aged eighteen through twenty-one, 45 C.F.R. § 121a.300(b)(5). Screening should begin with children a year or two younger than the youngest served, so as to forecast later demands on the school system.

Children are typically screened at the following points:

- on entry into kindergarten
- on transferring into the district at a higher grade
- periodically afterwards, every few years.

In addition, many districts have procedures that enable teachers, principals, and

sometimes parents to easily report suspected handicaps for evaluation. And some states conduct mass-media campaigns urging parents of handicapped children kept at home to contact their local schools. Under the law, locating such children is the state's responsibility.

Screening programs should be designed to detect the handicaps listed in Section 3.1. For young children, a typical screening includes the following elements:

- gross motor skills
- fine motor skills
- speech
- hearing
- verbal comprehension
- vision
- general health (physical examination).

At the kindergarten level, screening often includes readiness tests also. For older children, grades and test scores can be helpful in detecting learning disabilities. A simple reporting system can help to bring emotionally disturbed children to official attention; without one, teachers sometimes tend to wait out the problem until the child passes on to the next grade.

EVALUATION

The term "evaluation" describes a more thorough study of a child suspected of being handicapped. Regulations require "a full and individual evaluation of the child's educational needs" before placement in a special education program, 45 C.F.R. § 121a.531. The evaluation has five major purposes:

1. to determine whether or not the child is handicapped within the definitions of PL 94-142 and so is entitled to special education under the act
2. to ascertain the nature and severity of the child's handicap, and the extent to which it interferes (or will interfere) with schoolwork
3. to provide the data necessary for planning the child's special education
4. to determine what related services the child will need in connection with his or her education
5. to provide information for preparing the child's individualized education program (IEP).

A child's first evaluation requires written consent from the parents, 45 C.F.R. § 121a.504(b)(1)(i). See Section 3.3 for the procedures to be used when a parent refuses to give consent.

The evaluation must be conducted by expert personnel. Regulations specify a multidisciplinary team including at least one specialist in the area of the suspected disability, 45 C.F.R. § 121a.532(e).

The evaluation must cover "all areas related to the suspected disability." The regulations go on to suggest that these might include the following elements, where appropriate, 45 C.F.R. § 121a.532(f):

- health
- vision
- hearing
- social and emotional status (unexplained in the regulations)
- general intelligence
- academic performance
- communicative status
- motor abilities.

Some school districts include a psychological assessment and, where warranted, examinations by a social worker, guidance counselor, occupational therapist, and physical therapist.

The courts tend to be suspicious of overly simplistic evaluation procedures. In New York State, for example, a child was formerly classified as learning disabled only if he or she showed a 50 percent discrepancy between actual achievement and expected achievement, both as measured by test scores. A federal court struck down the criterion, "since it operates to eliminate consideration of factors and the use of techniques which do not, given the present state of the art, lend themselves to quantification," *Riley v. Ambach*, 508 F. Supp. 1222 (E.D.N.Y. 1980).

NONDISCRIMINATION

PL 94-142 requires that evaluation tests and materials be "selected and administered so as not to be racially or culturally discriminatory," 20 U.S.C. § 1412(5)(C). While that goal may never be completely accessible in practice for every child, the regulations seek to achieve it through specific guidelines that must be followed, 45 C.F.R. § 121a.532(a)-(d). These are:

1. No single procedure or criterion may be used to determine a child's educational program.
2. Any tests or other evaluation materials must have been validated for the purpose used.
3. IQ tests are permissible but are not sufficient by themselves; they can be used only with "tests tailored to assess specific areas of educational need."

Note that some states have their own restrictive policies on IQ testing.

4. Tests can be administered only by trained personnel and only in accordance with the publisher's instructions.

Moreover, all evaluations must be conducted in the child's native language "unless it is clearly not feasible to do so." The regulations define the child's native language as that which *his or her parents* normally use, 45 C.F.R. § 121a.9. Thus, evaluation in a language other than English may be necessary even if the child is fluent in English, in cases where the parents are not.

If the identified handicaps in a local district or a state show wide discrepancies among ethnic groups, a court or the Office for Civil Rights (OCR) may conclude that the evaluations are discriminatory. The problem can arise in two ways:

1. where the percentage of children as a whole identified as handicapped is very different for a minority group than for the state or district as a whole
2. where children of a minority group show a disproportionate distribution of handicaps, compared with the majority.

In the second category, the most common compiaint has been black children classed as retarded where their white counterparts bear the more socially acceptable label of learning-disabled.

Where substantial racial discrepancies exist, school systems have been hard pressed to prove that their evaluations are nondiscriminatory. The outcome in court may be an injunction to restore the racial balance, which can seriously disrupt the operation of an otherwise orderly special education program. A finding of discrimination by OCR, on the other hand, can lead to the withholding of federal funds.

RECOMMENDATIONS

1. Adhere strictly to the regulations outlined above, especially those addressed to nondiscriminatory evaluation. Courts tend to give school officials the benefit of the doubt when the regulations have been followed.
2. Maintain careful records of all evaluations and their results. The regulations require that this information be kept available for parents, 45 C.F.R. § 121a.502(a). Moreover, good records will be essential for responding to any challenge by a parent, including those short of a court action. See Section 3.3. If the child moves to another district, forward the records and keep a copy.
3. Include in evaluation records the names and qualifications of the multidisciplinary evaluation team, tests used and their results, names and qualifications (such as certifications) of persons administering tests, and any

other information, observations, and diagnostic notes that helped to determine the child's placement.

4. Monitor the breakdown of handicaps by ethnic groups, and investigate promptly any discrepancies. Try to eliminate any possibility of the discrepancies arising from discriminatory elements in the evaluations.
5. Evaluating children in their native languages can be extraordinarily inconvenient, especially when only a few families in the locality use that language. The law requires it, however, even for children who are reasonably fluent in English. For translators, contact community associations of the minority group in question. Some districts ask the child's parents, a relative, or a neighbor to translate. Forego native-language evaluation only after exhausting all other possibilities.

4.2 PLACEMENT

SUMMARY

PL 94-142 requires that handicapped children be placed in educational environments that are appropriate to their individual needs and that they be educated, to the greatest possible extent, with children who are not handicapped.

BACKGROUND

Before a series of court decisions beginning in 1972, most states educated only a fraction of their handicapped children, who were placed largely in special schools. Only students with the mildest, least conspicuous handicaps routinely gained admission to regular classrooms.

Many professionals in the early 1970s advocated the "mainstreaming" of handicapped children into regular classroom programs. The advantages, in addition to educational benefits, were said to include better attitudes toward handicaps on the part of handicapped and non-handicapped students alike. Not all experts agreed, however, and many regular classroom teachers expressed concern about their lack of training to work with handicapped children.

With the passage of PL 94-142 in 1975, mainstreaming became the law, though the word itself does not appear in the statute. States and local districts must now agree to educate handicapped students with those who are not handicapped in order to qualify for funds under the act.

LEAST RESTRICTIVE ENVIRONMENT

PL 94-142 and its regulations require the placement of children in the "least restrictive environment." Specifically:

> [Each state and school district] shall insure:
> (1) That to the maximum extent appropriate, handicapped children...are educated with children who are not handicapped, and
> (2) That special classes, separate schooling or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved

satisfactorily.
45 C.F.R. § 121a.550(b)

This regulation applies not just to children attending ordinary public schools, but also to those in public or private institutions of any kind.

Simply relocating all handicapped children in regular classrooms regardless of their individual needs--a practice sometimes called "dumping"--violates the regulation. As an official comment stresses, "The overriding rule...is that placement decisions must be made on an individual basis," 45 C.F.R. § 121a.552, *Comment*.

To facilitate meeting individual children's needs, the regulations require schools to make available a "continuum of alternative placements," not merely a choice between special schools and regular classes. The continuum must include at least the following elements, 45 C.F.R. § 121a.551(b):

- instruction in regular classes
- special classes
- special schools
- home instruction
- instruction in hospitals and institutions.

A resource room or "itinerant instruction" must also be available in conjunction with regular classroom placement.

Often it is appropriate to use these options in combination. A blind child, for example, might spend part of the week in a regular classroom, perhaps receiving special help in a resource room for an hour or two each day, and the rest of the week in a school for the blind that provides special equipment and instruction.

In choosing among placement options for a particular child, the school must follow these rules, 45 C.F.R. § 121a.552:

- The placement must be reconsidered at least annually.
- The placement must be based on the child's individualized education program (IEP).
- Every school district or special education unit must provide all of the placement options listed above that appear in its children's IEPs. A district may not, in other words, move handicapped children from one regular school to another merely to consolidate facilities and staff.
- In every placement, the school must consider the possible harmful effects on the child and on the quality of services.

- The school need not place a handicapped child in a regular classroom if the child is so disruptive as to impair significantly the education of nonhandicapped classmates.
- The child must be placed as close as possible to his or her home.
- Unless the IEP requires otherwise, the child must go to the same school that he or she would have attended if not handicapped.

The last two rules above may be inconsistent in jurisdictions that are busing for desegregation. Ordinarily, however, a court order mandating desegregation on constitutional grounds will take precedence over these regulations.

Because the placement must be in accordance with the child's IEP, the major decisions as to placement are made at the IEP meeting with a parent's participation. The parent must approve the initial placement. A parent must also be notified of any subsequent changes in placement and must be given the opportunity to object. See Sections 3.2 and 3.3.

Parental objection can lead eventually to a lawsuit. In that event the court need not merely decide between the parent and the school, but can instead come to its own decision as to the child's proper placement, *Anderson v. Thompson*, 495 F. Supp. 1256 (E.D. Wis. 1980).

The governing consideration is whether the proposed placement will provide an "appropriate" education in the individual case. For example, in *Kruelle v. New Castle County School District*, 642 F.2d 687 (3d Cir. 1981), a federal appeals court ordered a retarded child's residential placement on the grounds that the ordinary six-hour school day was not enough to provide that particular child with an appropriate education.

In arriving at its decision, a court is free to consider a broad range of factors. Another federal appeals court, for example, agreed with the parents that their deaf child should be placed in a regular classroom with a special teacher, not in a special school as the district had urged. The court conceded that the child would indeed receive a better education in the special school, but found that PL 94-142 requires only an appropriate education, not the best education possible. Other factors the court mentioned were the law's mainstreaming provision, the fact that the child would be closer to home in the regular school, and the wider opportunities for participation in extracurricular activities, *Springfield School District #50 v. Grace*, 656 F.2d 300 (8th Cir. 1981).

STATE REQUIREMENTS ON PLACEMENT

Most states have their own placement guidelines, which do not always parallel the federal regulations outlined above. Local districts must follow both federal and state law. If

the two are in direct conflict, federal law prevails.

States typically publish a list of placement options and require local districts to specify one from the list for each child. Often the state options, unlike the federal options above, point to particular combinations of edutational environments. The following options are a compilation from typical state lists:

1. full time in regular classroom; child monitored but receiving no special education or services
2. full time in regular classroom, with regular classroom teacher advised by special education teacher
3. majority of time in regular classroom; child in resource room with special education teacher not more than two hours daily
4. part time in regular classroom; child in resource room with special education teacher between two and four hours daily
5. majority of time in resource room with special education teacher; child joins regular class for specified subjects (e.g., music and art), appropriate special activities, lunch, and recess
6. full time in resource room with special education teacher
7. part time in special school; remainder in regular school under one of options (2) through (6) above
8. full time in special school; out-of-school hours at home
9. full-time resident in special school.

Some states list factors that schools must take into account in making placement decisions. These can go beyond the federal requirements outlined above.

PRIVATE PLACEMENT

A school system operating under PL 94-142 may choose between educating a handicapped child in its own facilities and placing the child in a private facility instead. When a child is privately placed by the school system, the entire program, including nonmedical care and room and board, must be provided at no cost to the parents, 45 C.F.R. § 121a.302. The decision as to public or private placement rests with the state, but lack of funds is no excuse for failing to place a child privately if needed, *Hines v. Pitt County Board of Education*, 497 F. Supp. 403 (E.D.N.C. 1980). If, however, the parent places the child in a private school on his or her own initiative, the cost must be borne by the parent.

Even after a public school system has placed a child in a private school, it retains the responsibility for complying with PL 94-142 and the regulations. Moreover, special rules govern the IEP when a child is privately placed, 45 C.F.R. § 121a.347:

- The public school system remains responsible for developing the child's IEP, in accordance with the regulations outlined in Section 3.2.
- The private school either must send a representative to the IEP meeting or must participate by telephone.
- Private school personnel can initiate a review of the child's IEP and can recommend changes to it, once the child has entered the private school.
- Even when IEP meetings are initiated by the private school and are conducted there, the public school system is still responsible for making sure that a parent and a public school representative attend. Both the public system and the parent must agree to any changes in the child's program before they are implemented.

Private placement is generally more expensive than placement in a public school. Large urban systems rarely resort to private placement, as they can support public facilities for all but the most severely handicapped students. Smaller and rural systems, with their sparser populations of handicapped children, require private placement relatively more often. As a result their special education costs tend to be higher.

Some states encourage the "pooling" of handicapped children among towns and counties, bringing enough children to one location that public placement becomes practical. To date there has been no court decision on whether this practice violates the rule that children must be educated as close to home as possible.

RECOMMENDATIONS

1. Be certain that local placement options include the full range of alternatives required under both state and federal law.
2. Plan ahead so that every required placement option can be made available in every school, if necessary. A newly identified child must usually be educated in the school closest to his or her home. Thus, there may be the need to accommodate a new sort of placement promptly.
3. Avoid a tendency to place children automatically by handicap. The law requires that each child be considered individually, and doing so is good educational practice.
4. The child's IEP should describe his or her placement clearly and specifically, and the placement should be consistent with the child's needs and objectives as expressed in the IEP.
5. The law requires reconsideration of every placement at least annually. For some children, more frequent reviews are appropriate. Move promptly if a child appears to regress or if a child disrupts work in a regular classroom.

6. When a parent objects to a placement, the child's placement *cannot be changed* while the due process procedure runs its course. See Section 3.3. This provision among others makes obtaining parental consent at the IEP meeting very important. It can also give special importance to the child's first placement because, should disagreement with the parent arise later on, the child will have to remain in the initial placement until the disagreement is resolved.
7. Choose facilities for private placement with great care. Before using a school for the first time, an unannounced personal inspection is often advisable. Be certain that private school personnel understand their obligations under the law. Keep in mind that the public school system remains ultimately responsible for the private school's compliance with the law, and follow closely the progress of every child privately placed.
8. In a private placement, do not turn over all control along with the child. Reach an understanding with the private school as to who will call and conduct IEP meetings. Public school personnel must attend, and should take an active part in, IEP meetings for privately placed students.
9. If your district has so few handicapped students as to require private placements relatively often, confer with neighboring jurisdictions about pooling children who have more severe handicaps. Support from the state is very helpful in reaching such agreements. Some states are willing to cover the transportation costs.

4.3 CURRICULUM AND STAFFING

SUMMARY

PL 94-142 requires that curriculum and extracurricular activities for handicapped children be as similar as possible to those offered their nonhandicapped counterparts.

CURRICULUM GENERALLY

PL 94-142 and its regulations make no specific reference to curriculum for handicapped children. The underlying requirement of a "free appropriate public education," however, applies to curriculum just as it does to every other aspect of a handicapped child's education. The term "appropriate" dictates a curriculum for handicapped children that differs as little as possible from that for nonhandicapped children. It is especially important that handicapped students receive an education in the basics to the full extent of their capabilities.

As a rule, the school should make every reasonable effort to adapt its ongoing curriculum to the special needs of handicapped students. Where doing so is impossible, owing to the nature or severity of the child's handicap, the school is responsible for designing and implementing a curriculum suited to that particular child.

In addition to formal curriculum, regulations require that schools make available the same range of "educational programs and services" to handicapped children as to nonhandicapped students in the same school system. The regulations provide the following examples, 45 C.F.R. § 121a.305:

- art
- music
- industrial arts
- consumer education
- homemaking education
- vocational education.

An official comment to the regulation adds that the list could include "any program or activity in which nonhandicapped students participate. Moreover, vocational education programs must be specially designed if necessary to enable a handicapped student to benefit fully from those programs," 45 C.F.R. § 121a.305, *Comment.*

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See Section 3.2 for a discussion of the requirements concerning physical education.

MINIMUM COMPETENCY TESTING

The issue of curriculum takes on special importance in those states that condition a high school diploma on the student's passing a minimum competency test. Handicapped students who can pass the test are, of course, entitled to the diploma. But when a student's handicap makes passing the test impossible, a dilemma results. It seems unfair to deny the diploma when the student is performing well, within his or her limitations; yet to other students, it seems equally unfair to establish lower standards for a particular group.

The states have considered several approaches to the problem:

- making no allowances for handicaps in administering the test; students who fail, handicapped or not, receive a "certificate of attendance" in lieu of a diploma (not recommended)
- making the test available in special form for some handicapped students--e.g., in braille or read aloud for blind students--but holding handicapped students to the same standards as others (not recommended)
- waiving the competency test requirement for handicapped students, and instead setting completion of the IEP as a standard for the regular diploma
- granting a special form of diploma to students who successfully complete their IEPs.

The first two options are of doubtful legality under Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against handicapped persons, and under PL 94-142. The second two options are more likely to survive scrutiny by the courts.

No court has yet ruled directly on the issue of minimum competency testing for handicapped students. A federal appeals court has, however, imposed a four-year bar on the use of a state competency test because of discrimination against black students in the education leading up to the test, *Debra P. v. Turlington*, 644 F.2d 397 (5th Cir. 1981). A similar result might well ensue if a handicapped student were to show discriminatory education. Moreover, the *Debra P.* court spoke to the need for fairness in the overall testing situation.

EXTRACURRICULAR ACTIVITIES

Handicapped students have an equal right with their nonhandicapped counterparts to participate in "nonacademic and extracurricular services and activities." Examples in the regulation include, 45 C.F.R. § 121a.306:

- counseling services
- athletics
- transportation
- health services (see Section 4.4)
- recreational activities
- school-sponsored special interest groups or clubs
- referral to agencies that help handicapped people
- in-school employment
- assistance in making outside employment available.

STAFFING

PL 94-142 greatly complicated school districts' staffing and training needs. The influx of handicapped students to regular classrooms has put an extra load on classroom teachers and has called for new forms of inservice training. Also, demand has grown for teachers qualified to work with more severely handicapped children. Even after several years of operation under the law, these problems have not yet been fully resolved in all districts.

It is essential to have an ongoing course of inservice training for regular classroom teachers on the techniques of working with handicapped children. It is also very helpful to establish a program under which classroom teachers can confer regularly, on a scheduled basis, with qualified special education teachers from outside the school, preferably through classroom visits. Although this kind of program has some costs, both in the time of special education teachers and in release time for classroom teachers, states that have implemented it are enthusiastic about the results.

With or without such a program, it is important to encourage frequent consultation between regular-classroom and resource-room teachers who share the education of particular children.

A key question in staffing turns on the state's scheme for certifying special education teachers. Traditionally, states have certified teachers according to handicap--teachers for blind students, for deaf students, and so on. The scheme was effective when most students were sorted into special schools by handicap. With the advent of the "least restrictive environment," however, and the resulting mixtures of handicaps in one classroom, certification by handicap can make staffing very difficult.

Some districts risk violating both federal and state laws by labeling children's handicaps according to which teachers are available. Thus on paper, at least, the handicaps and the teachers match. A more effective solution, implemented in a growing number of states, is "generic certification." This plan certifies a teacher to work with children having

any of several listed handicaps. A few states use generic certification for the milder handicaps, while retaining specific certifications for more severe handicaps.

RECOMMENDATIONS

1. Many handicapped students can follow the regular curriculum, though they may need special materials, equipment, and instructional methods to do so. Construct special curricula only after exhausting all possibilities for implementing the regular curriculum.
2. Where special curricula are required, they should parallel the regular curriculum as closely as possible, especially in the basics.
3. Do not overlook the nonacademic curriculum for handicapped students. The special arrangements needed can be expensive, but the regulations require them.
4. To the greatest extent possible, make certain that handicapped students have available the same range of extracurricular activities as do nonhandicapped students. Again, some expense may be involved.
5. Ensure that procedures for minimum competency testing are fair to handicapped students. Competency testing mandated at the district level is easier to modify; but district officials should be willing to confront the state over state-level testing. Note that denying a diploma to a handicapped student on the basis of a competency score, when the student's failure can be traced to the handicap, may be open to legal challenge involving the district as well as the state.
6. Make certain that your inservice program on special education for regular classroom teachers is adequate to their needs. Sometimes the training misses the issues that teachers consider most important. Consult with your teachers.
7. Arrange for routine contacts between classroom teachers and resource-room teachers. Encourage each group not to wait for a specific problem before consulting with the other.
8. Encourage state officials to institute generic certification, if your state has not already done so.

4.4 RELATED SERVICES

SUMMARY

In addition to special education, schools must provide the related services that handicapped students require to benefit from special education.

BACKGROUND

To qualify for funds under PL 94-142, states and districts must agree to provide handicapped children with a "free appropriate public education." Because the act defines a free appropriate public education as consisting of special education and related services, the schools are obliged to provide related services at public expense.

The extent of "related services" has caused more confusion and controversy than any other element of PL 94-142. Disputes most often arise over services that are relatively expensive and that benefit relatively few children.

EXTENT OF "RELATED SERVICES"

"The term 'related services' means...such developmental, corrective, *and other supportive services as are required to assist a handicapped child to benefit from special education...*" 45 C.F.R. § 121a.13(a) (emphasis added). The regulation goes on to provide the following list, 45 C.F.R. § 121a.13:

- transportation
- speech pathology
- audiology
- psychological services
- physical therapy
- occupational therapy
- recreation
- early identification and assessment of disabilities in children
- counseling services
- medical services for diagnostic or evaluation purposes
- school health services
- social work services in schools

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- parent counseling and training.

Not all handicapped children need all of these services. Conversely, the list does not include all related services that schools may have to provide. The regulation is phrased so that required services "include" the items above, suggesting that other services may also have to be made available. Indeed, the courts have expanded the range of schools' responsibilities beyond this list. See below.

The appropriate related services must be included in a handicapped child's individualized education program (IEP), 45 C.F.R. § 121a.346(c).

DEFINITIONS OF RELATED SERVICES

The regulations define all of the terms listed above. Some of the definitions, however, include elements not always associated with these terms. The examples below show some of the services with important implications for the schools, and those that have caused the most controversy. *These are only examples.* Educational officials facing a question about a particular related service are advised to consult the regulations. See also the discussions below on services whose definitions have been interpreted by the courts.

Transportation includes travel in and around school buildings, and specialized equipment such as adapted buses, lifts, and ramps, 45 C.F.R. § 121a.13(b)(13).

Speech pathology includes medical referral and counseling of parents, children, and teachers regarding speech and language disorders, 45 C.F.R. § 121a.13(b)(12).

Audiology includes lip reading, "speech conservation," provision of hearing aids, and counseling of pupils, parents, and teachers regarding hearing loss, 45 C.F.R. § 121a.13(b)(1).

Psychological services include testing and psychological counseling for children and parents, 45 C.F.R. § 121a.13(b)(8).

Recreation includes "assessment of leisure function" and "leisure education," 45 C.F.R. § 121a.13(b)(9).

Early identification means the implementation of "a formal plan for identifying a disability as early as possible in a child's life," 45 C.F.R. § 121a.13(b)(3).

Medical services are those provided by a licensed physician for diagnosis, 45 C.F.R. § 121a.13(b)(4).

School health services are those provided by a school nurse or other qualified person, 45 C.F.R. § 121a.13(b)(10).

Social work services include group and individual counseling with the child and family and "working with those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school," 45 C.F.R. § 121a.13(b)(10).

Some of the required services have not been part of the schools' traditional function. Most have significant cost implications, both in staffing and in the purchase of services from outside the school system. Some states have experienced territorial disputes between the agencies that formerly provided these services and the educational agencies.

The question of whether the schools must provide a particular service depends, first, on whether the service is one of those listed above and on whether it fits a definition in the regulations. Second, even an unlisted service may have to be provided if the child needs it to benefit from special education. The regulations are unclear in some respects, so it is difficult to ascertain precisely where the schools' responsibility leaves off.

MEDICAL SERVICES

The regulations set two restrictions on a medical service: it must be delivered by a licensed physician, and it must be for diagnosis, "to determine a child's medically related handicapping condition..." 45 C.F.R. § 121a.13(b)(4). Nevertheless, the school may have to provide (and pay for) services that are clearly medical and that are just as clearly not for diagnostic purposes.

The prototypical issue under medical services has been catheterization. Required by children with certain impairments of bladder function that interfere with voluntary control, catheterization is the process of inserting a clean, thin tube to draw off urine. Typically it must be performed every few hours. The procedure can be carried out by a school nurse or by any competent adult after a little training. Many children can handle it themselves by the time they are seven or eight.

Where the question has arisen, most states have resisted undertaking the responsibility for catheterization during school hours. They point out that the procedure is medical in nature but not for diagnosis, and so is not a medical service under the regulations.

The courts, however, have generally required schools to perform the procedure. Because it can be carried out by a school nurse, some courts classify it as a "school health service," which is a related service under the regulations. A federal appeals court has adopted broader reasoning. Because without catheterization the child could not attend

school at all, the court found catheterization to be a service required to assist the child to benefit from special education, and therefore within the regulations, *Tatro v. Texas*, 625 F.2d 557 (5th Cir. 1980). The court further held that to withhold the service would constitute discrimination against a handicapped person in violation of Section 504, Rehabilitation Act of 1973.

The *Tatro* decision opens the door to a wide range of medical services. Under its reasoning, the schools could conceivably be required to provide any life-support procedure that the child needs during school hours, even one requiring specially trained personnel. The reasoning would not apply, however, if the procedure can be scheduled outside school hours at no harm to the child.

PSYCHOLOGICAL SERVICES

The schools have long carried out most of the psychological services mandated under PL 94-142: testing, analyzing test results, interpreting information about child development, counseling, and so forth. The regulations make these services mandatory for handicapped children, where needed, and also specify counseling for parents. Otherwise the regulations add little that is new to the schools' responsibilities.

The major questions on psychological services have concerned psychotherapy, an item not mentioned at all in the original regulations. There has been some uncertainty as to whether schools must provide it to stay in compliance with the law.

The question arises most often in connection with children who are seriously emotionally disturbed, a handicapping condition that does come within PL 94-142. Nevertheless, because psychotherapy is so expensive, schools have objected to its inclusion as a related service. It can sometimes take months or years of therapy at a very high cost per hour before there is evident improvement in the child's condition.

Psychotherapy is usually provided by psychiatrists, who are physicians by training. Therefore, many schools claim it should be classed as a medical service and thus should be the parent's responsibility, except when used for diagnosis.

One state supreme court has ruled that psychotherapy is a psychological service, not a medical service, and so must be provided at public expense, *In the Matter of the "A" Family*, 602 P.2d 157 (Mont. 1979). The determining question under the act, however, should not be the category in which the service is placed, but rather, whether a child needs the service to progress educationally. The federal Office for Special Education, which administers PL 94-142 and the accompanying regulations, has adopted much the same criterion for psychotherapy. In court, no matter what legal test is used, the decision will usually turn on a debate between the schools' expert witnesses and those retained by the parent.

"UNLISTED" SERVICES

Related services are not limited to those listed above. Under the regulations, related services can extend in principle to anything the handicapped child needs to benefit from special education.

The courts have required services beyond those on the list in only a few instances. Even so, the possibility of having to provide unlisted services is especially troublesome to schools because educators have little to guide them in deciding whether a particular service is required. Where the service is inexpensive, a school is usually wise to provide it, even at the risk of creating a precedent. But a parent will sometimes request a service that is very costly and then take the school to court when it refuses.

Educators have been especially concerned with a federal appeals court ruling that calls for year-round education in the case of severely retarded students who would regress without it, *Battle v. Pennsylvania*, 629 F.2d 269 (3d Cir. 1980). In striking down a state statute limiting public education to 180 days each year, the court insisted that PL 94-142 requires schools to consider the needs of each child individually. This view of the law could make the reach of PL 94-142 virtually unlimited. It could require schools to provide almost any service that a child needs, so long as it furthers the child's education, no matter how inefficient, impractical, or expensive the service might be. Widespread adoption of the court's perspective would leave the states and local districts no protection from rapidly escalating costs.

Other courts, in the meantime, seem inclined to follow *Battle*. In *Georgia Ass'n of Retarded Citizens v. McDaniel*, 511 F. Supp. 1263 (N.D. Ga. 1981), a federal district court required the state to provide and pay for education in excess of 180 days for those handicapped children who need it. The responsibility for determining which children have that need rests with state and local educators.

Another expensive unlisted service arose in the case of a deaf child. The child's IEP included a range of special training, but the parents also wanted the IEP to include a sign-language interpreter during school hours. The school refused, perhaps concerned about setting an extremely costly precedent.

A federal appeals court ruled in favor of the parents, requiring the school to place a sign-language interpreter in the child's classroom, *Rowley v. Board of Education*, 632 F.2d 945 (2d Cir. 1980). The court based its decision on the phrase "free appropriate public education," the schools' main responsibility under PL 94-142. Because the child would learn more with an interpreter than without, said the court, the child's education required an interpreter to be "appropriate."

The *Rowley* court took the unusual step of specifying that its decision has "no

precedential value." This leaves the lower courts under it free to decide future cases differently, if they see fit. The decision does, however, further the view that related services are not limited either by the list appearing in the regulations or by expense.

Districts sometimes resist a less expensive service, fearing that too many other students will demand the same. A seven-year-old who sustained nervous system damage in an auto accident could not control his body temperature, and so required air conditioning during the summer. It would have cost only a few thousand dollars to air-condition the entire classroom, but instead the school built a five-foot Plexiglas cubicle, put in a window air conditioner, and installed a one-way radio hookup so the boy could hear his teacher over the noise. Although the boy made straight As, a federal district court found that he was not receiving an appropriate education, and that he was unable to mingle with non-handicapped children "to the maximum extent appropriate," as the law requires. The court issued a preliminary injunction ordering the district to air-condition the classroom, *Espino v. Besteiro*, 520 F. Supp. 905 (S.D. Tex. 1981).

The few courts to have considered the question take the regulation at face value: the schools must provide any service that a child requires to benefit from special education. When the service is very expensive, its cost in the end must be shared by all students. But whether a child "requires" a service is often a matter of degree. Any number of services could conceivably help a child to learn more. This makes an absolute rule inappropriate. Apart from the services listed above, it would seem more sensible to make an individual determination in each case, weighing the added benefit of each service to a handicapped child against the cost of that service.

RECOMMENDATIONS

1. Because a child newly identified as handicapped must usually be educated in the school closest to his or her home, it may be necessary to provide a particular related service on short notice. Be prepared to offer any of the services listed above. Especially in small or rural districts, some services may have to be purchased from outside the school system.
2. Decisions as to which related services a child will receive should be an outcome of the evaluation (Section 4.1), should be part of the agenda at the IEP meeting, and must be recorded on the IEP (Section 3.2).
3. Parental approval is required for related services, as for every other aspect of the child's placement. For suggestions on securing parental approval, see Section 3.3, Recommendations 4-6.
4. Disagreement between the parent and the school over related services is relatively common. Usually the disagreement arises when the parent requests

SUPPLEMENT
On Page 4.22, replace
the last paragraph
before "RECOMMENDATIONS"
with the following

"UNLISTED" SERVICES

(section continued)

The United States Supreme Court has since reversed the *Rowley* decision discussed above, holding that the school system need not supply this particular child with a sign-language interpreter. *Board of Education v. Rowley*, 50 U.S.L.W. 4925 (U.S. June 29, 1982) (No. 80-1002).

The states are obliged under PL 94-142 to offer each handicapped child a "free appropriate public education." In the Supreme Court, as in the courts below, the *Rowley* decision turned on the meaning of the word "appropriate." The lower courts ruled that "appropriate" calls for an education in which a handicapped child can approach his or her full potential as closely as nonhandicapped children do. But the Supreme Court set a very different standard. "To the extent that a State is required to provide a handicapped child with a 'free appropriate public education,' we hold that it satisfies this requirement by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." *Id.* at 4933. *How much* the child benefits is apparently not a factor. The opinion seems to imply that a minimum of educational progress is sufficient.

In reaching its decision, the Court looked to the purpose of PL 94-142, a point on which Congress was not entirely clear. The Court, however, determined that the Act is concerned primarily with granting handicapped children access to the public classroom; its purpose is not to ensure them strict equality of opportunity. Noting that Amy Rowley, the deaf child in the case, was making satisfactory progress from grade to grade even without a sign-language interpreter, the Court found the state to be fulfilling its obligations under the Act.

The case raised a second, more technical question which may have an important bearing on future court decisions concerning PL 94-142. As seen in the examples above, the courts have been willing to pass on the substance of individual children's programs. The Supreme Court now says that they may no longer do so. "[A] court's inquiry in suits brought under [PL 94-142] is two-fold. First, has the State complied with the procedures set forth in the Act? And second, is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits?" *Id.*

(footnotes omitted)

Once a court is satisfied that the state has met all of the procedural requirements, and that the IEP offers the child some degree of educational help, the court cannot intervene further in specifics of the program. This part of the opinion puts control of a handicapped child's education beyond the courts' reach, leaving it firmly in the hands of the states.

a service that the school is unwilling to undertake. If the service can be provided by school personnel already on the staff, or if it is otherwise inexpensive, it is usually best to provide the service.

5. Certain children can be presumed to need certain related services by virtue of their diagnosed handicap--for example, audiology for hearing-impaired children, speech pathology for speech-impaired children, etc. When they appear on the list above, such services must usually be provided.
6. In other cases, the need for a listed service is less apparent. There can be an honest difference of opinion, for example, as to whether a particular child requires counseling. One possible compromise is an agreement to provide the service, or not, for a stated time and to review the child's IEP at the end of that time, before the required annual review. Remember, however, that a subsequent parental challenge will leave the child's placement unchanged until the challenge is resolved, so the compromise may remain in force for months or years.
7. When the parent requests a service of a medical nature that the child must have during school hours for his or her physical well-being, the school will most often have to provide it. This is especially likely when the service is within the capabilities of the school nurse or parent volunteers. Note also that challenging such a request can lead to unfavorable publicity.
8. A dispute over psychotherapy also is likely to go against the school, especially when the child has been identified as seriously emotionally disturbed. One alternative is to ask the evaluation team if psychological counseling would suffice instead and, if so, to seek parental approval for that course. Professionals who offer psychological counseling ordinarily have less training than psychotherapists, and so their services are usually less expensive. School psychologists already on the staff may be qualified.
9. Requests for unlisted services generally fall in one of two categories. The relatively few that are essential to the child's receipt of any education must be provided. (They are uncommon because most such services are listed in the regulations.) More often, the requested service would enhance the child's education without being absolutely necessary. If the service is inexpensive, there is little point to instigating a costly dispute. Where the service would be a significant financial burden, however, and where school officials believe in good faith that the service would be of minimal value to the child, denying the service may be the better course. Keep in mind, however, that courts hearing such cases have generally sided with the parents.

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